Nos. 01-1118, 01-1119

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOSEPH SCHEIDLER, *et al.*,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE NARAL FOUNDATION/NARAL, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, CENTER FOR DISABILITY AND ELDER LAW, CHICAGO FOUNDATION FOR WOMEN, HUMAN RIGHTS CAMPAIGN, NATIONAL CENTER FOR LESBIAN RIGHTS, NATIONAL COUNCIL OF NEGRO WOMEN, INC., NATIONAL GAY AND LESBIAN TASK FORCE, NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, NATIONAL WOMEN'S LAW CENTER, NORTHWEST WOMEN'S LAW CENTER, NOW LEGAL DEFENSE AND EDUCATION FUND, PEOPLE FOR THE AMERICAN WAY FOUNDATION, RAINBOW PUSH COALITION, INC., SOUTHERN POVERTY LAW CENTER, WOMEN EMPLOYED, AND WOMEN'S LAW PROJECT AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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U.S. v. Anthony, 24 F. Cas. 829 (C.C.N.D.N.Y. 1873) 25

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United States v. Enmons, 410 U.S. 396 (1973) 9

United States v. Frazier, 560 F.2d 884 (8th Cir. 1977) 8

United States v. Green, 350 U.S. 415 (1956) 8

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United States v. Tropiano, 418 F.2d 1069 (2nd Cir. 1969) 8

Wisconsin v. Mitchell, 508 U.S. 476 (1993) 28

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18 U.S.C. § 924 10

PUBLICATIONS

A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr. (James Melvin Washington ed., 1986) 2, 18

Adam, Barry D., *The Rise of A Gay and Lesbian Movement* (rev. ed. 1995) 24

Branch, Taylor, *Parting the Waters: America in the King Years 1954-63* (1988) 22

Caner, Phoebe, *Mahatma Gandhi's Spinning Wheel: An Offering from the Intellectual Elite to the Rural Poor* (1999) (unpublished M.S. thesis, University of Washington) (on file with University of Washington Library) 21

Civil Disobedience in America: A Documentary History (David R. Weber ed., 1978) 25

Clendinen, Dudley & Nagourney, Adam, *Out for Good: The Struggle to Build a Gay Rights Movement in America* (1999) 24

D'Emilio, John, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970* (1983) 22, 23

TABLE OF AUTHORITIES – Continued

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Dalton, Dennis, *Mahatma Gandhi: Nonviolent Power in Action* (1993) 21

Gandhi, Mohandas K., *Limitations of Violence, Selections from Gandhi* (Professor Nirmal Kumar Bose ed., 2nd ed. 1957), *reprinted in Civil Disobedience and Violence* (Jeffrie G. Murphy ed., 1971) 2, 20

Gandhi, Mohandas K., *The Essence of Non-violence, Selections from Gandhi* (Professor Nirmal Kumar Bose ed., 2nd ed. 1957), *reprinted in Civil Disobedience and Violence* (Jeffrie G. Murphy ed., 1971) 20

Katz, Jonathan Ned, *Gay American History: Lesbians and Gay Men in the U.S.A.* (rev. ed. 1992) 23

King, Martin Luther, Jr., *The Words of Martin Luther King, Jr.* (selected by Coretta Scott King, 1996) 20

Sorin, Gerald, *Abolitionism* (1972) 25

Woodward, C. Vann, *The Strange Career of Jim Crow* (3d ed. 1974) 19

INTERESTS OF *AMICI CURIAE*

The NARAL Foundation®/NARAL® and its co-*amici* are organizations committed to promoting civil rights. All share a strong interest in protecting the guarantees of the First Amendment to the United States Constitution and the right to peaceful, non-violent protest as a means of effecting social change. Indeed, most civil rights were secured through exercise of these First Amendment freedoms, and co-*amici* depend on the exercise of their First Amendment rights to advance and protect the freedoms to which their organizations are con mitted. At the same time, all the *amici* want to ensure that forcible, threatening, and violent conduct is not confused with constitutionally protected, peaceful protest, lest the misdeeds of Petitioners and others like them taint and ultimately put an end to *amici*'s and others' efforts to effect social change through legitimate, constitutionally protected means. Descriptions of each of the *amici* are provided in the Appendix hereto.[1]

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[1] This brief was not authored, in whole or in part, by any counsel for a party. Sara N. Love, one of the authors of this brief, was at one time counsel for Respondents, but is no longer serving in that capacity. No person or entity, other than the *amici curiae*, their members, or counsel contributed monetarily to the preparation or submission of this brief. Counsel for all parties have consented to the filing of all *amicus* briefs.

SUMMARY OF ARGUMENT

The most powerful and successful advocates for social change have advanced their causes by embracing non-violence in word and in deed. Speaking of the struggle for civil rights in perhaps his most well-known address entitled "I Have a Dream," Rev. Dr. Martin Luther King, Jr. proclaimed: "We must forever conduct our struggle on the high plane of dignity and discipline. We must not allow our creative protest to degenerate into physical violence. Again and again we must rise to the majestic heights of meeting physical force with soul force." *A Testament of Hope*: *The Essential Writings and Speeches of Martin Luther King, Jr.* 218 (James Melvin Washington ed., 1986. In that same vein, Mohandas K. Gandhi stated: "I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent." Mohandas K. Gandhi, *Limitations of Violence*, *Selections from Gandhi* (Professor Nirmal Kumar Bose ed., 2nd ed. 1957), *reprinted in Civil Disobedience and Violence* 97 (Jeffrie G. Murphy ed., 1971). The actions of these men and their followers lived up to their explicit philosophies of non-violence.

In stark contrast, Petitioners Operation Rescue ("OR"), Joseph Scheidler ("Scheidler"), Andrew Scholberg ("Scholberg"), Timothy Murphy ("Murphy"), and the Pro-Life Action League, Inc. ("PLAL") (collectively "Petitioners") operated and managed their enterprise, the Pro-Life Action Network ("PLAN"), through force, threats, and violence to prevent Respondents from exercising their rights. As Scheidler described the enterprise's efforts to eradicate abortion: "You can try for 50 years to do it the nice, polite way, or you can do it next week the nasty way." (Plaintiff's Exhibit 709 (hereinafter "Px")). Branding

themselves the "pro-life Mafia," (Px 647), they participated in a long-standing pattern of engaging in, authorizing, and/or ratifying wrongful acts of violence, threats, and force to put an end to safe, legal abortion. Their conduct included, among other things, violent physical assaults on clinic staff and patients, forcible entry into clinics, the destruction of clinic property, massive threatening and violent blockades, and threats of harm. Unlike Rev. King and Gandhi, then, Petitioners were violent in word and in deed, much like the well-known Mafia whose name they chose to bear.

Petitioners' wrongfully forcible, violent, and threatening conduct constitutes extortion as defined in the Hobbs Act, 18 U.S.C. § 1951. As such, the court below properly found Petitioners liable for, and enjoined them from, engaging in those acts. Petitioners and *amici curiae* Seamless Garment Network et al. ("SGN *Amici*"), however, would have this Court believe that if it upholds the decision below, social protest and civil disobedience as we know them will cease to exist in this country. *See, e.g.*, Brief *Amicus Curiae* of Seamless Garment Network et al. in Support of Petitioners, at 3, 13-25. They could not be more wrong.[2] Their argument conflates the *cause* underlying social protest with the *conduct* aimed at promoting that cause. The ruling below does not prevent Petitioners, the SGN *Amici*, or any other advocates from pursuing and expressing their views on their respective causes. Instead,

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[2] Equally wrong are the *SGN Amici's* repeated assertions that Petitioners neither advocated nor engaged in acts of violence. *See, e.g.*, Brief of *SGN Amici*, at 2, 6. Those assertions contradict the overwhelming evidence, discussed more fully below.

through the mechanism of a carefully tailored injunction, it prevents Petitioners from using a very narrow set of tools, namely wrongful, violent, criminal conduct, to pursue their cause.

In truth, this case does not concern social protest protected by the First Amendment. As this Court has recognized, "The First Amendment does not protect violence. 'Certainly violence has no sanctuary in the First Amendment, and the use of weapons, gunpowder, and gasoline may not constitutionally masquerade under the guise of "advocacy."'" *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982 (quoting *Samuels v. Mackell,* 401 U.S. 66, 75 (1971) (Douglas, J., concurring)). Nor should a picket sign wielded as a weapon to strike a person find sanctuary in the First Amendment. That is what is at stake here, where Respondents have challenged *not* Petitioners' right to advocate through legitimate, protected means of expression, such as leafleting, picketing, and speaking out, but rather Petitioners' wrongful use of violence and criminal activity against Respondents.

Both lower courts appreciated the distinction between Petitioners' protected expression and their nonprotected conduct. The trial court held that: "While the political ends of the [Petitioners] – to convince the public of the need to protect what they characterize as 'unborn children' – are constitutionally protected by the First Amendment, a number of their means – destroying property and threatening violence[3] – are not." *NOW v. Scheidler*, No. 86 C

[3] Petitioners did more than just threaten violence: they engaged in, authorized, and/or ratified a number of violent acts, discussed in more detail below.

7888, 1999 WL 571010, at *16 (N.D. Ill. July 28, 1999). Similarly, the Seventh Circuit Court of Appeals ruled: "[T]he record is replete with evidence of instances in which [Petitioners'] conduct crossed the line from protected speech into illegal acts, including acts of violence, and it is equally clear that the First Amendment does not protect such acts." *NOW v. Scheidler*, 267 F.3d 687, 700 (7th Cir. 2001).

Petitioners' violence "is the antithesis of reasoned discussion." *Id.* at 707. As such, Petitioners cannot cloak themselves in the mantle of non-violent protest and expression historically (and rightfully) protected by the First Amendment. Petitioners are not the National Right to Life Committee, whose members speak, picket, and leaflet, peacefully and without the wrongful use of violence and threats, to express their opposition to abortion, which activities Respondents have not challenged. Holding Petitioners accountable for their actions will not jeopardize the long tradition of peaceful political protest that is the hallmark of our democracy, but rather will strengthen the First Amendment by encouraging more people to use legitimate means to engage in social protest in lieu of wrongfully using force, threats, and violence to pursue their agendas. For these reasons, the Court should affirm the ruling below.

ARGUMENT

I. REVEREND DR. MARTIN LUTHER KING, JR., MOHANDAS K. GANDHI, AND THE OTHER HISTORICAL CHAMPIONS OF CIVIL RIGHTS TO WHOM PETITIONERS & THEIR *AMICI* COMPARE PETITIONERS DID NOT ENGAGE IN CONDUCT THAT WOULD HAVE VIOLATED THE HOBBS ACT

Petitioners err in accusing the Seventh Circuit of a "cavalier disregard" of the First Amendment that "gives the stamp of approval" to RICO litigation against ideological adversaries. Operation Rescue Petition for Writ of Certiorari, at 10. They wrongly claim that if this Court upholds the Seventh Circuit's decision, RICO actions based on predicate Hobbs Act offenses will proliferate against a wide variety of social protesters, and this country will move toward "totalitarian oppression of dissent." Brief for Petitioner Operation Rescue, at 44. They further assert that under the reasoning of the lower court, the Hobbs Act could have been used against Rev. King, Gandhi, and other exemplars of non-violent social protest. *Id.* at 7. Those claims are nothing more than hyperbole.

Petitioners misapprehend the effect of upholding the Seventh Circuit decision. Rather than quelling social protest, such a ruling from this Court would prevent the self-proclaimed "pro-life Mafia" from wrongfully using force, threats, and violence, prohibited under the Hobbs Act, to stop others from exercising their lawful rights to provide and receive medical attention for a host of conditions, not just pregnancy. Moreover, it would uphold the right of those who oppose abortion to make their views known by lawful means, much as members of the National Right to Life Committee – dismissed by Petitioners as

"wimps" and "lilypads for life" – have chosen to do. (Px 801 p. 13; Trial Transcript 1511-12, 3936, 4144 (hereinafter "TT")). In short, affirmance would honor and continue our nation's long and proud history of civil disobedience, and yet deter PLAN and other mafia-like enterprises from wrongfully using threats and violence to get their way.

A. The Hobbs Act Penalizes The Wrongful Use of Actual or Threatened Force, Violence, or Fear

The Hobbs Act penalizes anyone who "in any way or degree obstructs, delays, or affects commerce . . . by . . . extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section." 18 U.S.C. § 1951(a). Extortion, in turn, is "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."[4] *Id.* § 1951(b)(2).[5]

Petitioners' conduct falls squarely within the above definition of extortion, and any suggestion by Petitioners that they have been singled out for legal sanctions based

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[4] The Hobbs Act prohibition is written in the disjunctive. "For conduct to come within the scope of the Act it may, for example, include either actual force, or actual violence, or the threat of violence, or the engendering of fear of force or violence." *U.S. v. Arena*, 180 F.3d 380, 395 (2nd Cir. 1999).

[5] Because this brief focuses on the element of "wrongful use of actual or threatened force, violence, or fear," *amici* will not undertake a comprehensive examination of the other Hobbs Act elements.

on their views – as opposed to their conduct – is inconsistent with the long history of Hobbs Act prosecutions, many of which involved conduct strikingly similar to Petitioners'. For example, the Fifth Circuit affirmed the conviction of a defendant who made threats to a person, broke a store window, and committed an assault. *United States v. Nadaline*, 471 F.2d 340 (5th Cir. 1973). The Third Circuit affirmed the application of the Hobbs Act to defendants who rushed into clinic premises, knocked down and injured employees, blocked access to clinic rooms, damaged equipment, pushed and shoved patients, knocked down barricades, and made threatening comments. *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349-50 (3rd Cir. 1989). The Fourth Circuit upheld a Hobbs Act conviction where the defendant threatened that the victim "couldn't afford to have [certain people] against" him. *United States v. Santoni*, 585 F.2d 667, 670 (4th Cir. 1978). The Eighth Circuit found that proof that a defendant had attempted to arouse fear by threatening to detonate an explosive device attached to the victim's belt was sufficient proof of attempted extortion to satisfy the Hobbs Act. *United States v. Frazier*, 560 F.2d 884 (8th Cir. 1977). The Second Circuit affirmed the conviction of defendants who threatened to push a business competitor out of the way and warned that he might "get his head broke [*sic*]." *United States v. Tropiano*, 418 F.2d 1069, 1073 (2nd Cir. 1969). All of these decisions are in line with this Court's ruling that using threats, force, and violence to force an employer to pay for unwanted, superfluous, and fictitious work falls within the Hobbs Act. *United States v. Green*, 350 U.S. 415 (1956).

As shown below, Petitioners' conduct was even more serious than conduct found to violate the Hobbs Act in

several of the aforementioned cases, and is properly punishable under the Hobbs Act and RICO.

B. Petitioners Operated PLAN Through A Pattern of Force, Violence, Threats, and Fear

The conduct of Petitioners, through their enterprise PLAN, falls squarely within the definition of extortion under the Hobbs Act and cases applying the statute. PLAN was designed "to put clinics out of business." *NOW*, 1999 WL 571010, at *3 (citing TT 4149). At trial, Respondents presented evidence of numerous incidents of extortionate conduct at reproductive health clinics across the country spanning a period of twelve years. The most salient feature of Petitioners' conduct is the use of actual and threatened force and violence which, in the eyes of this Court and the Solicitor General of the United States, is "*inherently wrongful*." *See* Brief for the United States as *Amicus Curiae*, at 29, and citations therein (emphasis added); *see also United States v. Enmons*, 410 U.S. 396, 399-400 (1973).[6]

PLAN held annual conventions across the country almost every year from 1984 through 1997. *NOW*, 1999 WL 571010, at *4. At those conventions, PLAN leaders

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[6] The jury made clear, in question 6 of the verdict form, that none of the predicate acts supporting the RICO violation was a mere sit-in "without more." (PA 2 (Verdict Form)); *see also NOW*, 1999 WL 571010, at *10 n.6 ("None of the jury's findings was based solely on blockades of clinic doors or sit-ins within clinics."). The evidence proved, and question 6 confirmed, that liability was predicated on the wrongful use of threats, force, and violence.

instructed members on tactics to close clinics, agreed to yearlong agendas, (Px 13B, 721, 435A at 7; Plaintiffs-Appellees' 7th Circuit Appendix 96 (hereinafter "PA")), and closed the clinics in the convention area through massive, forcible blockades code named "field training" in order for "everyone to practice what they've learned." *NOW*, 1999 WL 571010, at *4 n.2; *NOW*, 267 F.3d at 694, 703; (PA 96). For example:

- At the 1985 convention, PLAN members agreed to a "unified national agenda" covering May 1985 – April 1986, which they designated "A Year of Pain and Fear for America's Abortion Providers." (Px 721). They directed PLAN members to issue a "Christmas Truce" by writing the reproductive health clinics in their area and threatening them that on December 28, the clinics would have to "close or be closed." *NOW*, 1999 WL 571010, at *4; (Px 726). Scheidler sent letters to all the clinics in Chicago, stating that he would "call to confirm" that the clinic agreed to close. He warned that if they did not, they would be subjected to "non-violent[7] direct action," (Px 729), including

[7] The Court should consider what Petitioners actually *mean* by "non-violent." Incredibly, Scheidler claimed that bombing a clinic does not constitute violence; in his words, "I hardly think [bombing] is violence, since it is against bricks and glass." (PA185). That assertion defies logic and contradicts federal criminal law, which defines a "crime of violence" as one that "has as an element the use, attempted use, or threatened use of physical force against the person *or property* of another" or "that by its nature, involves a substantial risk that physical force against the person *or property* of another may be used in the course of committing the offense." 18 U.S.C. § 924(c)(3) (emphases added) . As the criminal code makes clear, violence is violence, whether

(Continued on following page)

"entering the clinics, sitting in, blocking the entrance or blocking passages leading to the [procedure rooms]." (Px 726; TT 1019-21). PLAN members in St. Louis and Phoenix also issued similar threats. (Px 801).

- The PLAN leaders, through their 1985-86 agenda, also directed PLAN members to invade reproductive health clinics. (Px 713). In March 1986, Scheidler and other PLAN leaders met in Pensacola and planned a clinic invasion. Two of the leaders promised to invade the clinics, and Scheidler agreed that he too might participate if he could do so without being arrested. (TT 4014-15, 4019-22). The next day, a number of PLAN invaders burst into the clinic. They pushed the administrator down the stairs, causing her severe disk damage. As a result, she had to wear a collar and go to physical therapy for several months. (TT 1469-72). In addition, one of the invaders slammed a NOW escort up against the wall, causing serious injuries. The invaders then destroyed the clinic's medical equipment, while Scheidler was outside with a bullhorn. (*Id.;* Px 664; TT 4022). Afterwards he bragged about and took credit for the invasion, boasting that he had "[s]hut down the abortuary for a couple of days." (Px 670; TT 1508-10; 1022-25). In fact, the clinic was closed for a week. (TT 1473). Scheidler also lauded the invaders for their actions.

the target is a person or a piece of property, such as a clinic or medical equipment.

("Good job, John" (TT 1510); "Joan Andrews was superb" (PA 184)).

- In June 1985, PLAN activists forcibly invaded a clinic in Delaware. The participants destroyed medical equipment, barged into operating rooms where staff and patients were engaged in appointments, tore down cabinets, destroyed medication and medical equipment, and chained themselves to medical and operating room tables. *NOW*, 1999 WL 571010, at *2 (citing TT 663).

- In April 1986, shortly after several clinics had been bombed, Scheidler and three large male PLAN members entered the clinic of Respondent Delaware Women's Health Organization and positioned themselves so that they prevented the clinic administrator, a petite woman who was there alone, from escaping. They refused her requests to leave and commandeered the telephones. Once they trapped her, they told her that they were there to "case the place" because they intended to "close [the clinic] down," and that she had "better find . . . a different job because [she] could be in big trouble." (TT 1151-54).

- Operation Rescue was organized in 1987 at a PLAN leadership council meeting. *NOW*, 1999 WL 571010, at *3. Its stated purpose was to "overwhelm the law enforcement system and gain free access to the clinics without legal consequences." *Id.* The PLAN leadership targeted Cherry Hill, New Jersey, as the site of OR's "field training." (Px 32). At the Cherry Hill blockade, rows and rows of people physically blocked access to the clinic

and overwhelmed law enforcement. (Px 1200D; TT 1042, 4816-17).

- PLAN taught "lock and blocks" at its 1988 convention in Chicago, Illinois. A "lock and block" is "where protestors physically lock their bodies to the doors of clinics or other large objects in front of clinic doors" so that no one can enter. *NOW*, 1999 WL 571010, at *3. This was a tactic that PLAN bragged it "pioneered." (Px 435A at May 13-14, 1991). The "field training" at the end of the 1988 PLAN convention was a lock and block at a local Chicago clinic. *NOW*, 1999 WL 571010, at *4 n.2; (Px 148).

- In 1989, PLAN members organized forcible blockades to occur in nearby Farmington and Livonia, Michigan, during the annual PLAN convention. Hundreds of PLAN protestors closed several clinics. (TT 3854-63; Px 607).

- On April 29, 1989, PLAN organized a "National Day of Rescue," which coincided with the 1989 PLAN convention's "field training." Of this event PLAN bragged that "prolifers in 17 cities didn't need to risk arrest because the clinics were closed down for fear of the upcoming rescues" [blockades]. (TT 1076-77, 3854-63).

- In 1991, PLAN closed clinics in Wichita, Kansas for weeks shortly after PLAN held its convention. *NOW*, 1999 WL 571010, at *4. One witness at trial described how she was trapped in a car in 110 degree heat over the course of two days while Scheidler and other PLAN members screamed at her, banged on the car windows, and lay down in front of the

car to keep it from moving. On the third day, United States Marshals cleared a corridor for the patients to get through the massive crowd. As the patients made their way in, the crowd spat and grabbed at them, injuring at least one patient. (TT 766-780).

- In 1992, in San Antonio, Texas, protestors closed clinics daily in conjunction with the PLAN convention. *NOW*, 1999 WL 571010, at *4 n.2; (TT 4130-31, 4256).

- The force and violence of PLAN blockades were so well known that when PLAN advertised it was coming to Milwaukee, Wisconsin in 1997, the local Planned Parenthood clinic decided to close rather than suffer through the impending PLAN "field training." (Px 288; TT 1877-78).

Scheidler's hotline and the PLAN newsletter proudly reported these events and praised the involvement of PLAN members. *NOW*, 1999 WL 571010, at *4 n.2.

As if this evidence were not enough, Respondents proved other instances in which Petitioners operated and managed PLAN through force and violence:

- In Washington, D.C., busloads of protestors rushed the doors of a clinic, pressing the bodies of clinic staff members and volunteers against the clinic entrance as they screamed they were being crushed. As one witness testified, "Several of us started yelling as loud as we could, 'please stop pushing. We're going to get hurt.'" *NOW*, 1999 WL 571010, at *1 (internal citations omitted).

- In Milwaukee, Wisconsin, protestors repeatedly banged on a patient's car as she entered a health clinic parking lot and grabbed at her arms and legs as she attempted to enter the clinic. *Id.*

- In Chico, California, hundreds of protestors physically smashed a clinic administrator and two clinic escorts up against a clinic's entrance doors. When the clinic administrator told the protestors that she was scared and was being crushed, she heard protestors shout, "Don't pay any attention to them. They're murderers. They're baby killers. Whatever happens to them is God's will." The glass entrance to the clinic was damaged, and the clinic administrator received bruises on her legs and arms. *Id.* at *2.

- In Los Angeles, California, protesters assaulted a patient who was seeking care at a health clinic as a follow-up to her ovarian surgery. She testified: "All of a sudden, a crowd of people came running from both sides of the building towards the parking lot, towards us . . . somebody grabbed me by the back of my hair, and I fell up against the car. Then I just saw all of these people and they were grabbing their arms and grabbing at me. . . . Then I felt myself going down, and I got scared, real scared." *Id.* One protester hit her over the head with a "big" picket sign. The attack forced open her surgical incision, causing her to bleed from the abdomen, and she had to be rushed to the hospital. *Id.*

Witness after witness testified to the impact that this violence had upon them. A clinic volunteer recounted, "They were . . . shoving and elbowing and smashing. I

mean, they were right within less than an inch of us. . . . [Y]ou know, you start sweating. You're scared. Your heart's pounding." A patient testified, "I was hysterical. I was afraid. I thought they were going to kill me." A clinic administrator explained, "I was concerned about the injury to our staff and to our patients, not only the physical injury of the building itself and the equipment but also the emotional injury and distress to our patients and to our staff, who were terrified." *Id.* (citing TT 1444, 1522, 663).

In light of the overwhelming evidence adduced at trial, the jury and the district court found that "[t]hese incidents were connected to the organizational efforts of the Pro-Life Action Network (PLAN) and Operation Rescue (OR) and the leadership of these organizations through Joseph Scheidler and other named defendants." *Id.* at *3.

The jury concluded that this conduct constituted:

- 21 Hobbs Act violations;
- 25 state extortion law violations;
- 25 attempts or acts of conspiracy to violate federal or state extortion law;
- 4 acts or threats of physical violence;
- 23 violations of the Travel Act; and
- 23 attempts to violate the Travel Act.

(PA 2 (Verdict Form)). Those findings are consistent with the body of case law construing the Hobbs Act, particularly the ruling of the First Circuit Court of Appeals, which faced very similar facts in *Libertad v. Welch*, 53 F.3d 428 (1st Cir. 1995):

> Appellees used force (physical obstruction, trespass, vandalism, resisting arrest), intimidation, and harassment of clinic personnel and patients, with the specific, uniform purpose of preventing the clinics from conducting their normal, lawful activities. The record also amply shows that Appellees' tactics include the intentional infliction of property damage, and directly result in the clinics' loss of business. *It is difficult to conceive a set of facts that more clearly sets forth extortion as it is defined by [the Hobbs Act].*

Id. at 438 n.6 (emphasis added).

As shown above, Petitioners did more than just make a few threats or block a few doorways. They devised and engaged in a pervasive, nationwide course of conduct designed to intimidate clinic staff and patients into relinquishing their rights and preventing them from carrying out their business.[8] As the Solicitor General recognizes, *see* Brief of United States at 29, "Imposing liability for [Petitioners' conduct] lies at the core of the Hobbs Act," and this Court can uphold the decision below without threatening legitimate means of social protest – means that Petitioners were free to, but did not, choose.

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[8] Similarly, according to the complaint referred to on page 27 of the Brief for Petitioner Operation Rescue, the anti-fur protesters who were sued under RICO allegedly threw paint on a store, threw acid on the windows, glued the door, threatened "We will burn down your house," and smashed plate glass windows. *Jacques Ferber, Inc. v. Bateman*, No. 99-CV-2277 (E.D. Pa. filed May 3, 1999). These allegations, if true, demonstrate exactly the type of forcible, threatening, violent conduct that the Hobbs Act is intended to address; consequently, applying the Hobbs Act to such conduct is not in any way a distortion of the statute.

C. The Hobbs Act Poses No Threat To Social Protest Not Involving The Wrongful Use Of Force, Violence, And Threats

Petitioners and their *amici* invoke the names of Gandhi, Martin Luther King, Jr., and other champions of civil rights and civil liberties in a vain attempt to transform themselves into modern-day civil rights activists engaged in protected acts of peaceful protest. *See, e.g.*, Brief for Petitioner Operation Rescue, at 7, 44. That comparison belies the fact that Reverend King and Gandhi, unlike Petitioners, did not embrace violence as a tool of social change – in word or in deed – and did not engage in conduct that would have violated the Hobbs Act.

By its terms, the Hobbs Act does not reach social protest that does not involve "wrongful use of actual or threatened force, violence, or fear." For example, even assuming *arguendo* that the actions of civil rights protesters would have satisfied the other elements of the Hobbs Act, Rev. King and his followers did not violate the Hobbs Act because they marched, sang, spoke out, and sat quietly at businesses, without wrongfully using violence or threats. In fact, as the SGN *Amici* acknowledge, most violence, to the extent it occurred, was directed at Rev. King and his followers, who refrained from responding in kind no matter how severe the force used against them.[9]

[9] Rev. King did not endorse the acts of violence committed by some civil rights protesters. In fact, Rev. King taught his followers "not to fight even if attacked." Interview: Martin Luther King, Jr., *Playboy*, January 1965, *reprinted in A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* 352 (James Melvin Washington ed., 1986).

See, e.g., C. Vann Woodward, *The Strange Career of Jim Crow* (3d ed. 1974); *see also*, Brief of SGN *Amici*, at 18.

Similarly, the Hobbs Act would not have restrained Gandhi and adherents to his philosophy because their conduct was truly non-violent. Most of the *SGN Amici* would also not be guilty of Hobbs Act violations, nor would most individuals or groups who picket, leaflet, or give speeches.[10] In each of the following examples, the conduct at issue would not have been found to violate the Hobbs Act.

1. *Opponents of Segregation*

OR mistakenly claims that "[t]he court below held that pro-life sit-ins at abortion facilities violate the federal extortion statute." OR Petition at 20. That is not the case. The comparison to non-violent civil rights sit-ins is inapt at best, and a slap in the face to peaceful civil rights advocates worldwide.

Petitioners' conduct directly and unequivocally violates the very principles for which Rev. King stood. Rev. King cautioned us against "succumb[ing] to the temptation to use violence in our struggle for freedom" lest our legacy be "a long and desolate night of bitterness" and "a never-ending

[10] If, however, those organizations cross the line from legitimate means of social protest into punching or knocking down loggers or people wearing fur, or making repeated death threats, they might well be found to have violated the Hobbs Act. In that event, the Hobbs Act would curtail only the threatening, violent aspects of their conduct. Importantly, the activists' right to voice their disagreement through picketing, leafleting, and non-threatening speech, for example, would not be impaired.

reign of chaos." Martin Luther King, Jr., *The Words of Martin Luther King, Jr.* 71 (selected by Coretta Scott King, 1996). He also believed that:

> Violence as a way of achieving racial justice is both impractical and immoral. It is impractical because it is a descending spiral ending in destruction for all. The old law of an eye for an eye leaves everybody blind. It is immoral because it seeks to humiliate the opponent rather than win his understanding; it seeks to annihilate rather than to convert. Violence is immoral because it thrives on hatred rather than love. It destroys community and makes brotherhood impossible. It leaves society in monologue rather than dialogue. Violence ends by defeating itself. It creates bitterness in the survivors and brutality in the destroyers.

Id. at 73. In his pledge to the non-violent movement, Rev. King promised to "[r]efrain from violence of fist, tongue, or heart" – and he honored that pledge. *Id.* at 74.

Mohandas K. Gandhi, like Rev. King, advocated non-violence. As he saw it, "[n]on-violence is the law of the human race and is infinitely greater than and superior to brute force." Mohandas K. Gandhi, *The Essence of Non-violence, Selections from Gandhi* (Professor Nirmal Kumar Bose ed., 2nd ed. 1957), *reprinted in Civil Disobedience and Violence* 95 (Jeffrie G. Murphy ed., 1971). Moreover, he wrote, "I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent." Mohandas K. Gandhi, *Limitations of Violence*, *reprinted in id.* at 97. In fact, in coining the term *satya-graha* to describe his philosophy, Gandhi wrote:

> [I]t excludes every form of violence, direct or indirect, veiled or unveiled, and whether in thought, word, or deed. It is a breach of *satya-graha* to wish ill to an opponent or to say a harsh word to him or of him with the intention of doing harm. . . . *Satyhagraha* is gentle, it never wounds. It must not be the result of anger or malice. . . . It was conceived as a complete substitute for violence."

Dennis Dalton, *Mahatma Gandhi: Nonviolent Power in Action* 37 (1993) (citation omitted). Moreover, *satyagraha* "excludes the use of violence because man is not capable of knowing the absolute truth and, therefore, not competent to punish." *Id.* at 38 (citation omitted). Matching deed with word, Gandhi responded to the British ban on Indian textiles by reintroducing manual spinning wheels and himself becoming a spinner, instead of engaging in or encouraging wrongful acts of violence or threats in response to British rule. *See* Phoebe Caner, *Mahatma Gandhi's Spinning Wheel: An Offering from the Intellectual Elite to the Rural Poor* 41, 46, 51, 92 (1999) (unpublished M.S. thesis, University of Washington) (on file with University of Washington Library).

Under Rev. King's and Gandhi's philosophy of non-violence, peaceful protest may take many forms, such as peaceful sit-ins, peaceful demonstrations, leafleting, and picketing aimed at persuading. These tactics have been tools of the civil rights movement for decades. Threats of force and violence to physically harm others or destroy property are not part of Rev. King's legacy, and Petitioners' deeds are its antithesis. Petitioners mislabel as "sit-ins" their violent blitzes on America's clinics. The term "sit-in" meant something much different in the early years of the civil rights movement. The civil rights activists of the

1960's sat at all-white lunch counters and in the all-white section of buses to make the point that segregation was wrong, and to open the doors of those and other businesses to people of all races, unlike Petitioners, who sought to close the doors of full-service clinics. While participating in sit-ins, Rev. King's followers were non-violent, peaceful, and even polite. *See, e.g.*, Taylor Branch, *Parting the Waters: America in the King Years 1954-63* 274 (1988). Had Rev. King encouraged his followers to enter a restaurant, barricade the doors, assault the staff, and vandalize the restaurant equipment, his conduct would have been analogous to Petitioners'. But he did no such thing. Similarly, the civil rights strategy of ending segregation without wrongfully using threats and violence to force businesses to close contrasts sharply with PLAN's use of wrongful acts to put clinics out of business, prevent women from obtaining the health care they sought, and cause physical, emotional, and economic harm as needed to do so. *NOW*, 1999 WL 571010, at *3. Consequently, holding Petitioners accountable for their conduct would in no way preclude present-day Gandhis and Kings from speaking out against injustice and engaging in acts of peaceful social protest.

2. *The Gay Rights Movement*

More recently, the gay rights movement has emerged as a leading agent of social change. Gay rights activists have engaged in public education, media campaigns, grass-roots political organizing to support or oppose political candidates and legislation, litigation, marching, and speaking out, *see, e.g.*, John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970*, at 1-5 (1983) (describing

creation of gay rights movement), none of which violate the Hobbs Act.

When the movement began in the early 1950's, gay rights advocates in the Mattachine Society, although often called "militant," engaged in lawful, peaceful means of advancing their cause, such as using the court system to fight police entrapment of homosexuals, sending out press releases, launching a gay-oriented magazine called *ONE*, and leafleting in various communities. *See generally id.* at 54-74, 84-91, 149-175; *see also* Jonathan Ned Katz, *Gay American History: Lesbians and Gay Men in the U.S.A.* (rev. ed. 1992). When the Mattachines adopted a more conservative approach in the mid 1950's, *ONE* "strove to keep alive the militant spirit" of the Mattachines by criticizing oppression and discrimination and by publishing articles intended to spur debate. D'Emilio, *supra*, at 87-89. The Daughters of Bilitis, a women's alternative to the Mattachines, pursued public education, participation in research, and changes in the penal code to achieve equality. *Id.* at 102-03. None of these actions violated the Hobbs Act.

Even the well-known evening of resistance at the Stonewall Inn in Greenwich Village, New York was a world apart from Petitioners' years-long siege of our nation's clinics. On that fateful night in the summer of 1969, police officers raided a bar at which mainly gay and transgender individuals were socializing. The patrons of the bar defended themselves against the police raid. *Id.* at 231-32. Although some acts of violence occurred, they were defensive acts brought about in response to the surprise raid. The patrons did not intend to, and did not attempt to, obtain or control another's property.

In recent years, the number of groups advocating gay and lesbian rights has increased, and the diversity within those groups has grown. Members of one such group, Queer Nation, have protested right-wing politicians, held kiss-ins, celebrated same-sex marriages, formed "pink patrols" to protect against street violence, staged peaceful, non-violent demonstrations, and organized a consumer boycott of a restaurant chain that rid itself of gay and lesbian employees. Barry D. Adam, *The Rise of A Gay and Lesbian Movement* 163 (rev. ed. 1995). Similarly, the AIDS Coalition to Unleash Power ("ACT UP") was formed in 1987 to direct attention and funding to the AIDS crisis. Dudley Clendinen & Adam Nagourney, *Out for Good: The Struggle to Build a Gay Rights Movement in America* 547-48, 557-72 (1999). ACT UP members have distributed condoms and safe-sex literature, chanted, hung banners in public places, held peaceful sit-ins at City Hall in New York, and spoken out at political events. *See, e.g.*, Reports available *at* http://www.actupny.org/reports (last visited Sept. 4, 2002). In addition, they have contacted congressional representatives and written letters to corporations. *See, e.g.*, Reports available *at* http://www.actupny.org/reports/congress402.html (last visited Sept. 4, 2002). These activities, while perhaps more confrontational than that of earlier gay rights advocates, did not involve the wrongful use of violence, threats, or force, and did not seek to obtain or control the property of others.

3. *The Abolitionists*

The SGN *Amici* go to great lengths to describe the actions of abolitionist William Lloyd Garrison, who was known for regularly burning the Constitution. Brief of SGN *Amici*, at 14-16. Yet they concede that Garrison's

activity would be protected under modern law. *Id.* at 15. Indeed, burning the Constitution is an unequivocal act of expressive conduct, akin to burning the flag, which this Court has protected under the First Amendment. *See Texas v. Johnson*, 491 U.S. 397 (1989) (finding burning of American flag to be protected). Garrison did not engage in a criminal assault upon a person or another's property when he burned the Constitution, nor did he engage in the wrongful use of threats or extortionate conduct. In fact, Garrison and the members of the American Anti-Slavery Society not only expressly disavowed the use of physical force, but also kept their resolve to eschew violence even as they faced increased violence directed at them. Gerald Sorin, *Abolitionism* 89 (1972).

4. *The Suffragists*

Finally, Petitioners' conduct bears little resemblance to that of Susan B. Anthony and Dr. Alice Paul, two well-known proponents of women's suffrage discussed by the SGN *Amici*. Brief of SGN *Amici*, at 20-23. Dr. Paul and her followers focused their efforts on educating the public about the plight of women, using tools such as speeches, rallies, and leafleting to achieve that objective. Eventually, they burned President Wilson's speeches and burned him in effigy. *Civil Disobedience in America: A Documentary History* 195-96 (David R. Weber ed., 1978). Several of Dr. Paul's followers who picketed the White House were arrested on "arbitrary charges of 'obstructing traffic,'" which led others to ignite symbolic fires outside of the White House "in the face of certain arrest." *Id.* at 196. To express her opinion of the all-male franchise, Susan B. Anthony voted in Rochester in 1872. *U.S. v. Anthony*, 24 F.

Cas. 829 (C.C.N.D.N.Y. 1873). She was convicted of voting fraud for her conduct.

The actions of these women were sometimes criminal, but were not used to obtain or control another's property and did not involve the wrongful use of threats, force, and violence that separates Petitioners from other protesters.[11] Any broad comparison between Petitioners and the suffragists is simply wrong.

In sum, then, the acts described above did not violate the Hobbs Act because those acts, unlike Petitioners', did not involve the wrongful use of force, threats, and violence to obtain property. For these reasons, the Court should reject Petitioners' attempt to masquerade as champions of civil rights and uphold the decision of the lower court.

II. THE FIRST AMENDMENT DOES NOT PROTECT PETITIONERS' PATTERN OF FORCE, VIOLENCE, AND THREATS

Petitioner OR argues that its members' "extensive free speech activity" is "at issue" and that the Court of Appeals' decision threatens their First Amendment rights. Brief of Petitioner Operation Rescue, at 2, 46. That argument misses the point and misstates the issue in this case. As

[11] The SGN *Amici* wrongfully suggest that Petitioners did not violate the Hobbs Act by comparing them to Carrie Nation and the Women's Christian Temperance Union ("WCTU"). Brief of SGN *Amici*, at 23. That argument is a red herring, as it is based on the assumption that the conduct of the WCTU would not have violated the Hobbs Act. In fact, the acts of WCTU, if they satisfied all of the other elements, might have been found to violate the Hobbs Act.

shown above, Petitioners were held liable for engaging in forcible, threatening, violent acts in violation of various criminal statutes and RICO, *not* for protected speech or expressive conduct. In fact, the injunction imposed by the lower court was narrowly tailored to restrict only criminal conduct and to avoid infringing upon mere expression of a point of view. *NOW*, 267 F.3d at 706. As the Court of Appeals recognized, the injunction "has struck the proper balance and has avoided any risk of curtailing protected activities" because it "prohibits only illegal conduct – trespassing, obstructing access to clinics, damaging property, using violence or threats of violence, or aiding, abetting, inducing, directing, or inciting any of these acts." *Id.* Moreover, the injunction specifically "underscores that it does not prohibit peaceful picketing, speeches, or praying on public property, attempts to speak with patients and staff, [or] handing out literature." *Id.* On that basis, the Court of Appeals rejected Petitioners' "alarmist prediction" that a peaceful picketer who took two accidental steps onto private property would be deemed to have violated the injunction. *Id.* The First Amendment, then, was honored in every respect.

Respondents have not questioned that Petitioners and others have a First Amendment right to voice their opinions about abortion consistent with a number of this Court's rulings. In fact, while Respondents disagree with the views espoused by members of organizations like the National Right to Life Committee, Respondents have not challenged their right to express those views through lawful means such as picketing and leafleting. In this case, Respondents did not challenge even Petitioners' ugliest speech, such as calling patients, staff, and volunteers "murderers," "baby killers," and "sluts," because Respondents

recognize that the First Amendment protects even unpleasant speech. (TT 1032, 1445, 1519).

However, that speech is not what is at issue here. Petitioners have not merely participated in peaceful demonstrations or expressed their political views; instead, they have used their enterprise to hold America's reproductive health clinics under siege, wrongfully employing force, intimidation, threats, and violence to deprive Respondents of their property.[12] The First Amendment offers them no protection for such conduct. *See, e.g., Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993) (violent conduct and physical assaults not protected) (citations omitted); *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 773 (1994) (threats not protected); *see also NOW*, 267 F.3d at 701-02 (discussing U.S. Supreme Court precedent holding that violent conduct, threats, and language used to carry out illegal threats are not protected by the First Amendment).

This Court's decision in *Claiborne Hardware*, which guided every aspect of the trial, *cf. NOW*, 267 F.3d at 703, does not compel a different conclusion. *Claiborne Hardware* involved isolated acts of violence as to which there was no evidence that the NAACP authorized or ratified. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 923-24 (1982). With respect to defendant Charles Evers, the Court made clear that Evers could have been found liable had the facts shown that he had "authorized, directed, or

[12] As noted above, Petitioners have left no doubt that they eschewed protected means of influencing the public and the government regarding abortion, choosing instead to use force, threats, and violence to pursue their agenda. (Px 709 ("You can try for 50 years to do it the nice, polite way, or you can do it next week the nasty way")).

ratified specific tortious activity." *Id.* at 927. He was absolved of responsibility because of a lack of evidence, not because the First Amendment immunized force or violence. *Id.* at 927-29. In addition, the Court cited with approval its decision in *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941), which held that an injunction was proper in the context of pervasive violent conduct much like the conduct at issue here. *Claiborne Hardware*, 458 U.S. at 923. Again, the First Amendment was not a sanctuary for violence.

Another way to consider the distinction between protected speech and Petitioner's conduct is by analogy to the Second Amendment. Some people interpret the Second Amendment as giving citizens the right to own guns. Even assuming *arguendo* that it does, when someone uses a gun to commit murder, the Second Amendment affords no protection from criminal and civil consequences. Similarly, the First Amendment unquestionably gave Petitioners the right to express their opposition to abortion by speaking out against it, marching in protest, carrying picket signs, and leafleting; however, when Petitioners chose to pick up their picket signs and hit people over the head with them, *see supra* p. 15 (citing *NOW*, 1999 WL 571010, at *2), they lost the protection of the First Amendment for that violent conduct and subjected themselves to liability under RICO and the Hobbs Act.

In short, no one is trying to silence Petitioners;[13] rather, Respondents seek court orders requiring Petitioners to put

[13] For that same reason, the SGN *Amici* need not fear that their freedom of expression is in jeopardy, *see* Brief of SGN *Amici*, at 24, for Respondents recognize that the voices of our nation's activists are the very instruments the First Amendment was intended to protect.

(Continued on following page)

down their weapons and stop using force, violence, and threats against Respondents and others. Affirming the decision below would achieve that result.

CONCLUSION

Petitioners could have chosen any number of ways of making their opposition to abortion known. Instead of leafleting, picketing, or speaking out, they chose to become the "pro-life Mafia," wrongfully using force, violence, and threats to inflict harm upon, threaten, and induce fear in clinic staff and patients. When they made that choice, they violated the Hobbs Act. This Court should affirm the lower court's ruling.

Respectfully submitted,

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Presumably the SGN *Amici* in fact engage in the type of "non-violent direct action" they describe in their brief (and not the type engaged in by Petitioners), but do not make threats, commit assaults, destroy property, or otherwise engage in acts of extortion. If that presumption is correct, then they have nothing to fear, because the injunctive relief ordered by the court below is carefully tailored to enjoin only crimes, not protected speech.

APPENDIX

DESCRIPTIONS OF THE *AMICI*
(in alphabetical order)

For well over a century, the *American Association of University Women* ("AAUW"), an organization of 150,000 members, has been a catalyst for the advancement of women and their transformations of American society. In more than 1,500 communities across the country, AAUW plays a major role in activating advocates nationwide on AAUW's priority issues, including: gender equity in education; reproductive choice; social security; and civil rights issues. AAUW promotes the social, economic, and physical well-being of all persons, including freedom from violence. AAUW believes that in order for women to advance in the workplace, education, and all aspects of their lives, women must be free to make their own reproductive health choices. Therefore, AAUW supports the right of every woman to safe, accessible, and comprehensive reproductive health care, including safe access to family planning and abortion clinics nationwide.

The *Asian American Legal Defense and Education Fund* ("AALDEF"), founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through the prosecution of lawsuits, legal advocacy and dissemination of public information. AALDEF has throughout its long history supported public demonstrations and civil disobedience in furtherance of its civil rights agenda. It has provided advice and legal representation to protesters in a number of settings. The violent acts of the appellants in the instant case fall well beyond the civil rights activities supported by AALDEF.

The *Center for Disability and Elder Law* ("CDEL") is a not-for-profit legal aid organization that serves the legal interests of persons over the age of sixty and those with disabilities living in Chicago. Because women generally live longer than men, the majority of our clients are women. CDEL's mission is to provide appropriate resolution of civil legal needs and inquiries of our clients through the use of staff and volunteer attorneys. Services are provided in a manner that sensitively recognizes and accommodates the needs of each person's disability and age. Through the use of a vast network of pro bono attorneys, CDEL works to advance the rights of our clients through advocacy, litigation, outreach, and education. Since its inception in 1984, CDEL has assisted countless women in protecting their legal rights, thereby improving their quality of life.

Chicago Foundation for Women is a public grantmaking organization which funds Chicago metropolitan area organizations and projects that address the needs of women and girls of all economic, ethnic and racial backgrounds. The Foundation works to remove obstacles that prevent women and girls from achieving their full potential in all aspects of their lives, with a focus on promoting access to a complete range of reproductive and other health information and care; economic self-sufficiency; and freedom from violence. Chicago Foundation for Women envisions a society in which women's and girls' voices and abilities are fully protected and realized.

The *Human Rights Campaign* ("HRC") is the nation's largest gay and lesbian civil rights organization, with over 450,000 members nationwide. HRC envisions an America where lesbian, gay, bisexual and transgender people are ensured of their basic equal rights, and can be open,

honest and safe at home, at work and in the community. HRC believes in the constitutional right to reproductive choice, including abortion. As a political organization with a nationwide grassroots program to encourage people to advocate for equal rights, HRC also has a strong interest in ensuring that Americans can fully exercise their First Amendment freedom of expression.

The *National Abortion and Reproductive Rights Action League Foundation®/National Abortion and Reproductive Rights Action League®* (collectively "NARAL"), with 27 state affiliates and hundreds of thousands of members and supporters nationwide, is dedicated to keeping abortion safe, legal, and accessible for all women. NARAL's mission is to support and protect, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices through education, training, organizing, legal action, and public policy. NARAL recognizes that the nationwide campaign of anti-choice violence threatens women's right to choose abortion by exacting a physical and emotional price from patients who seek access to medical services, and by exacerbating the shortage of providers of abortion.

National Center for Lesbian Rights ("NCLR") is a national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, free legal advice and counseling, and public education. In addition, NCLR provides representation and resources to gay men, and bisexual and transgender individuals on key issues that also significantly advance lesbian rights. NCLR has a strong commitment to freedom of expression and association as well as to reproductive autonomy for all women.

Established in 1935, the *National Council of Negro Women, Inc.* ("NCNW") is the nation's broadest based organization of African American women, with an outreach to four million. NCNW represents 38 national women's organizations, 252 chartered community-based sections in 42 states, 42 college-based sections and thousands of individual members. NCNW's mission is to advance opportunities and improve the quality of life for African American women, their families and their communities. This mission is fulfilled through advocacy and community-based programs in the United States and Africa.

The *National Gay and Lesbian Task Force* ("NGLTF") has worked to eliminate prejudice, violence and injustice against gay, lesbian, bisexual and transgender people at the local, state and national level since its inception in 1973. As part of a broader social justice movement for freedom, justice and equality, NGLTF is creating a world that respects and celebrates the diversity of human expression and identity where all people may fully participate in society.

The *National Partnership for Women & Families* ("National Partnership"), founded as the Women's Legal Defense Fund in 1971, is a non-partisan, non-profit advocacy group that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of women and family. The National Partnership firmly believes that quality health care must include access to the full range of women's reproductive health services. As a result, the National Partnership has a long history of promoting and defending a woman's right to choose by filing *amicus curiae* briefs in major reproductive rights and health cases.

The *National Women's Law Center* is a Washington-based legal organization that has been working since 1972 to advance and protect women's legal rights. The Center's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of women. The fundamental right to abortion recognized in *Roe v. Wade* is of profound importance to the lives, liberty, health, and safety of women throughout the country. Because of the tremendous significance to women of the freedom to choose whether to bear children, the National Women's Law Center seeks to preserve women's right to abortion, which can only be assured if there is access to healthcare providers.

The *Northwest Women's Law Center* ("Law Center"), based in Seattle, Washington, is a non-profit public interest legal organization that works to advance the legal rights of women through litigation, education, legislative advocacy and the provision of legal information and referral services. Since its founding in 1978, the Law Center has been dedicated to representing the interests and rights of women seeking abortions. The Law Center has a long history of litigation and participation as *amicus curiae* in cases throughout the Northwest and the country on behalf of women seeking safe and legal abortions. The Law Center has also been instrumental in the passage of legislation that provides safe access to abortion services.

NOW Legal Defense and Education Fund ("NOW Legal Defense") is a leading national nonprofit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to combat sex-based discrimination and to secure equal rights. A major goal of NOW Legal Defense's work is to secure reproductive rights for all women. To this end,

NOW Legal Defense has litigated numerous cases involving clinic violence and efforts to protect safe access to reproductive health services, including *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) and *Schenck v. Pro-Choice Network*, 519 U.S. 357 (1997). NOW Legal Defense has also intervened on behalf of doctors, women and clinics to defend the Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248, against constitutional challenges in several cases.

People For the American Way Foundation ("People For") is a national, non-partisan, education-oriented citizens organization established to promote fundamental constitutional rights and civil liberties. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For has over 500,000 members and supporters across the country. People For has filed *amicus* briefs before the United States Supreme Court in cases raising important questions relating to the First Amendment and access to reproductive rights. We join in this *amicus* brief because of the importance of protecting women and their doctors in the exercise of their rights against violence and threats of violence and of distinguishing such conduct from fully protected First Amendment freedom of speech.

The *Rainbow PUSH Coalition, Inc.* ("RPC") is a non-profit organization with over 300,000 members representing virtually every state in the Union and many foreign nations. Its mission is to promote peace, justice and equality. Founded by Rev. Jesse L. Jackson, Sr., RPC actively promotes informed voter participation through registration and information campaigns. RPC attempts to bring about shared economic security for minorities, women and other traditionally under-represented constituencies by encouraging

diversity and inclusion in America's markets and work places. RPC fights for fairness and equality in every sphere of life, while it fights in the tradition of Martin Luther King, Jr. to end violence at home and abroad. A central principal of civil obedience as practiced by Gandhi and Martin Luther King, Jr. is that unearned suffering is redemptive. In other words, it is only when protests are non-violent that they have the moral authority to produce lasting social change. We therefore oppose any attempt to liken violent anti-abortion protests to classical civil rights movements of the 20th century.

Founded in 1971, the *Southern Poverty Law Center* ("The Center") is a nationally recognized leader in the area of civil rights litigation. The Center has litigated numerous pioneering civil rights cases on behalf of women, minorities, factory workers, poor people in need of health care, mentally ill persons, children in foster care, prisoners facing barbaric conditions of confinement and many other victims of injustice. The Center has litigated and won six landmark civil rights lawsuits before this Court, including a case last Term, *Hope v. Pelzer*, 122 S. Ct. 2508 (2002).

Women Employed is a national membership association of working women based in Chicago, with a membership of 2,000. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts. Women Employed maintains that it is every individual's fundamental right to obtain healthcare, and any restriction or impediment to this right should be unlawful. Likewise, employees engaged in the administration of healthcare

should be guaranteed the right to perform their work free from any form of harassment.

The *Women's Law Project* ("Law Project") is a non-profit feminist legal advocacy organization based in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the Law Project is committed to the elimination of sex discrimination and believes that reproductive freedom is an essential component of women's equality. Since our founding, we have frequently represented medical professionals and patients seeking to provide or receive abortion services, often in the face of organized and concerted anti-abortion violence. Our clients have been subjected to arson, death threats, massive and repeated clinic blockades, vandalism of medical equipment and patient records, chemical attacks, assaults, bomb scares, anthrax hoax letters, and frequent harassment and stalking of doctors, patients, and staff.